



Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

CERTIFIED MAIL

91 7108 2133 3935 6298 8927

August 22, 2012

Vergil Daughtery, III
Southland Community Development Corporation
29 Thomas Coke Drive
Waynesville, NC 28785-5911

RE: Construction for the establishment of a one hundred-fifty (150) bed nursing care facility that does not participate in the Medicaid (Title XIX) program
Chiquola Maison Skilled Nursing Facility
Honea Path, South Carolina (Anderson County)

Dear Mr. Daughtery:

The Department has determined that the Certificate of Need application for Chiquola Maison Skilled Nursing Facility be denied. The decision is based upon the written findings contained in the attached Analysis and upon the following conclusions:

1. The applicant did not meet Project Review Criteria 2a, 2e and 13a, in that the target population was not clearly identified, the projected utilization was not justified and the applicant did not demonstrate adequate experience.
2. In consideration of Project Review Criterion 4b, Opposition, staff concur that, based on the proposed capturing of Medicare patient days, an adverse impact could occur to the existing Anderson County nursing care providers that provide Medicaid services. It is important for these providers to remain financially viable in order to continue to provide care to this underserved, low-income, elderly population. Staff does not feel any increase in accessibility to Medicare and private pay patients outweighs this adverse impact.
3. Staff is also concerned with the ability of the applicant to comply with Project Review Criterion 2c (Services to Meet Need) due to apparent lack of adequate rehabilitative beds and no enhanced access to Medicaid patients, and Project Review Criterion 4a (Support of Affected Persons), due to limited support from local healthcare providers and the target population outside of Honea Path.
4. Project Review Criterion 15, Financial Feasibility, is called into question if the aggressive utilization projections are not achieved.
5. The applicant also amended its application during the review period contrary to R.61-15 Section 310 by indicating an intent to partner with "an experienced South Carolina SNF entity" for management services.

August 22, 2012

Mr. Daughtery

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A copy of the Notice of Appeal Procedure is enclosed for your convenience. If you have any questions, please feel free to contact us at (803) 545-4200.

Sincerely,



Beverly A. Brandt, Chief
Bureau of Health Facilities and Services Development

Enclosures: Notice of Appeal Procedure
Chiquola Maison Application Analysis

cc: Russell M. Harris, CEO and Executive Director, Covenant Way
Walt Cartin, Esquire, Parker Poe
Rev. Thomas H. Johnson, Jr., Chair, Board of Trustees, Southland Community
Development Corporation

Notice of Appeal Procedure
Pursuant to S.C. Code Section 44-1-60

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 calendar days after notice of the decision has been mailed to the applicant or respondent, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with the Department by the applicant, permittee, licensee, or affected person.
2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a timely written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393. A filing fee in the amount of \$100 made payable to SC DHEC must also be received by the Clerk within the time allowed for filing a request for final review. However, if a request for final review is filed by facsimile, the filing fee may be mailed to the Clerk of the Board if the envelope is postmarked within the time allowed for filing a request for final review.

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

3. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 calendar days after notice of the decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due. A request for final review will be returned to the requestor if the filing fee is not received on time as described above.
4. The request for final review should include the following:
 - a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision
 - b. a statement of any significant issues or factors the Board should consider in deciding whether to conduct a final review conference
 - c. a copy of the Department's decision for which review is requested
5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures. If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within 30 calendar days after notice is mailed that the Board declined to hold a final review conference.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

Chiquola Maison Application Analysis

This document is organized as follows:

A. Background information

1. Existing nursing home facilities in Anderson County
2. Anderson County Demographics
3. Regulations
4. SC Health Plan and Standards
5. Proposed Project Overview

B. Project Review Criteria Summary

C. Analysis and Findings

A. Background information

1. Existing nursing home facilities in Anderson County

From Joint Annual Report (JAR) data:

Facility	City	Licensed Beds	2010% Occ. Rate	2011% Occ. Rate*
Ellenburg Nursing Center	Anderson	181	95.0%	95.4%
Emeritus at Anderson Place	Anderson	44	71.0%	89.3%
Exalted Health & Rehab	Iva	60	97.1%	95.5%
Fellowship Health & Rehab	Anderson	88	96.7%	95.4%
Gardens at Town Creek	Pendleton	60	CON voided	
Hosanna Health & Rehab	Piedmont	88	96.5%	97.0%
NHC- Anderson	Anderson	290	97.7%	97.6%

* data pending

2. Anderson County Demographics

According to the QuickFacts from the US Census Bureau, in 2011, the Anderson County residents 65 years and over comprised 15.4% of the total population as compared with 14.1% for SC. The population in 2010 was 187,126 with an estimate of 188,488 for 2011. The population was 165,740 according to the 2000 Census, so the population increased by 12.9% between 2000 and 2010, as compared with 15.3% for South Carolina during this time period. The QuickFacts indicated the persons per square mile in Anderson County were 261.6 vs. 153.9 in SC.

According to the 2010-2011 SC Health Plan (Plan), for Anderson County, the total persons aged 65 or older was 25,330 in 2009 with a year 2016 projection of 30,090. Census 2010 data show the Anderson County population for age 65 to 99 to be 28,329 persons. The SC Office of Research and Statistics (SC ORS) has since provided the following updated population projections for Anderson County persons age 65 and older:

Year	Population
2011	29,000
2013	30,400
2015	31,900
2018	35,300

Population Information for Anderson County:

<u>Census 2000</u>	<u>Census 2010</u>	<u>Total</u>	<u>% change</u>
165,740	187,126	21,386	12.9%

Anderson County Population Projections (ORS):

<u>Year</u>	<u>Total</u>
2011	188,800
2013	192,200
2018	201,000

Based on 2011 JAR data for Anderson County nursing homes, there were a total of 1,132 Medicare admissions for a total of 55,650 patient days. For all admissions, Anderson County residents comprised 595 of 709 nursing home residents, a total of 83.9% of residents. Anderson County residents comprised 4.25% of the nursing home residents for the nursing homes in Abbeville, Greenville, Oconee and Pickens Counties.

According to the Anderson County QuickFacts from the US Census Bureau, the median household income for Anderson County from 2006-2010 was \$42,871, comparable to \$43,939 for SC, with around a 2.5% difference. The percent of Anderson County residents below the poverty level, 2006-2010, was 15.8% as compared with 16.4% for SC, which is also comparable.

3. Regulations

The regulation in effect at the time the Certificate of Need (CON) application was filed was R.61-15 "Certification of Need for Health Facilities and Services" effective June 27, 2003. The regulations have since been revised effective May 25, 2012.

Section 307.1 states: The Department may not issue a Certificate of Need unless an application is in compliance with the State Health Plan as described in this regulation, project review criteria, and other regulations which must be identified by the Department. The Department may refuse to issue a Certificate of Need even if an application is in compliance with the State Health Plan but is inconsistent with project review criteria or departmental regulations. The Department must identify any regulation that is used as a basis for denying an application that is in compliance with the Plan.

Section 310 "Changes During Review Period" states: If an applicant amends his application during the review process, the department will determine whether or not the amendment is substantial and constitutes a new application. If the change results in an increase in cost, the fees will be adjusted accordingly.

Staff concludes that Chiquola Maison amended its application as evidenced by the information presented during the July 12, 2012, Project Review Meeting in which they announced the intent to contract with a management company. This information was confirmed in a document dated August 15, 2012, but was never included with the original application or in information received prior to the publishing of Notification of Affected Persons in the April 27, 2012 State Register. This fee is proposed to be an additional expense ranging from approximately \$230,000 to \$615,000 per year for the first five years of operation. The management fee is proposed to be paid from net

revenue and not a line item under “Expenses.” Staff notes this is not how applicants in the past have accounted for a management fee. The applicant explained in a response dated August 15, 2012, this is because “any fees for management, consulting, and technical assistance should be commensurate with performance as measured by occupancy and revenue.” Staff notes that the financial information beginning on page 44 included a blank line item for Management Fees under Operating Expenses. Staff notes that on page 26 of the application, in response to Part B (8)(i), the applicant attested that an entity other than an employee of the licensee had not been engaged to manage or operate the facility. The applicant further attested in Part B (8)(j) there was no agreement, contract, etc. that would change this information.

4. SC Health Plan and Standards

2010-2011 South Carolina Health Plan Excerpts from A. Nursing Facilities

From page XII-1: A ratio of 39 beds/1,000 population age 65 and over is used to project the need for 2012. Since the vast majority of patients utilizing nursing facilities are 65 years of age or older, only this segment of the population is used in the need calculations. A two-year projection is used because nursing facilities can be constructed and become operational in two years.

From page XII-2: Because nursing facilities are located within approximately thirty (30) minutes travel time for the majority of the residents of the State and at least one nursing facility is located in every county, no justification exists for approving additional nursing facilities or beds that are not indicated as needed in this Plan. The major accessibility problem is caused by the lack of Medicaid funding since the Medicaid Program pays for approximately 65% of all nursing facility residents. This Plan projects the need for nursing facility beds by county. The benefits of improved accessibility do not outweigh the adverse effects caused by the duplication of any existing beds or the placement of Medicaid funds for the beds.

Certificate of Need Standards for Nursing Facilities from the 2010-2011 SC Health Plan

1. Bed need is calculated on a county basis. Additional beds may be approved in counties with a positive bed need up to the need indicated.
2. When a county shows excess beds, additional beds will not be approved, except to allow an individual nursing facility to add some additional beds in order to make more economical nursing units. These additions are envisioned as small increments in order to increase the efficiency of the nursing home. This exception for additional beds will not be approved if it results in three and/or four bed wards. A nursing facility may add up to 16 additional beds per nursing unit to create either 44 or 60 bed nursing units, regardless of the projected bed need for the county. The nursing facility must document how these additional beds will make a more economical unit(s).

5. Proposed Project Overview

The proposed 150-bed project will be comprised of 108 beds dedicated to long-term nursing care, 24 beds for the care of those with Alzheimer’s and related dementias, and 18 beds for rehabilitative care. All rooms are single occupancy. Future planned building for this site are: assisted living facility, medical office building, medical retail building and a senior independent living building.

A 5,411 SF Wellness Center is proposed to adjoin the skilled nursing facility. Rehabilitative therapy (Rehab) is budgeted to include: physical therapy (PT), occupational therapy, speech therapy and respiratory therapy. Four full-time therapy staff are budgeted and will be under the supervision of the "SNF Administrator."

Daily Rates:

PT/Rehab (18 beds)	\$445.00
Alzheimer's (24 beds)	245.00
Long Term Care (108 beds)	245.00

With a blended daily rate of \$268/day, the average expense per bed was reported to be \$174/day. The applicant stated during the project review meeting that the actual daily rate for Medicare/rehabilitative care is expected to average \$500/day, and at this rate, stated the break-even analysis would require an average occupancy rate of 35%.

Payor Mix at 90% occupancy: 45% Medicare, 47% private pay, and 8% insurance/other.

Projected Utilization: Year 1 - 40% Year 2 - 75% Year 3 - 90%

The total project cost for Chiquola Maison revised on March 16, 2012 is estimated at \$34,090,191 and is itemized as follows:

Land	\$ 693,000
Construction	\$21,332,000
Architect Fee	\$ 1,517,521
Equipment	\$ 2,050,480
Financing –construction loan	\$ 959,940
Financing – permanent loan	\$ 1,527,320
Developer's Fee	\$ 997,584
Other Development Costs	\$ 1,172,315
<u>Total Reserve Costs</u>	<u>\$ 3,840,031</u>
Total Project Cost	\$ 34,090,191

Number of Building:	One
Number of Stories:	Three
Square Footage:	125,341

B. Project Review Criteria Summary

Selected Project Review Criteria as identified in the "Complete Letter" of March 29, 2012 and verbiage from Section 802 of R. 61-15, "Certification of Need for Health Facilities and Services":

1. Compliance with the Need as Outlined in the 2010-2011 South Carolina Health Plan

The proposal shall not be approved unless it is in compliance with the State Health Plan.

2. Community Need Documentation – 2a, 2b, 2c, 2e

- 2a. The target population should be clearly identified as to the size, location, distribution, and socioeconomic status (if applicable).
- 2b. Projections of anticipated population changes should be reasonable and based upon accepted demographic or statistical methodologies, with assumptions and methodologies clearly presented in the application. The applicant must use population statistics consistent with those generated by the State Demographer, State Budget and Control Board.
- 2c. The proposed project should provide services that meet an identified (documented) need of the target population. The assumptions and methods used to determine the level of need should be specified in the application and based on a reasonable approach as judged by the reviewing body. Any deviation from the population projection used in the State Health Plan should be explained.
- 2e. Current and/or projected utilization should be sufficient to justify the expansion or implementation of the proposed service.

Acceptability – 4a, 4b

- a. The proposal and applicant should have the support of "affected persons" (including local providers and the target population). The lack of opposition should not be considered support for the purposes of these criteria.
- b. Where documented opposition exists to a proposal, such opposition will be considered along with the application.

Distribution (Accessibility) – 3b, 3d, 3e, 3f, 3g

- b. The proposed service should be located so that it may serve medically underserved areas (or an underserved population segment) and should not unnecessarily duplicate existing services or facilities in the proposed service area.
- d. The proposed facility should not restrict admissions. If any restrictions are applied, their nature should be clearly explained.
- e. The applicant must document the means by which a person will have access to its services (e.g. outpatient services, admission by house staff, admission by personal physician).
- f. The applicant should address the extent to which all residents of the area, and in particular low income persons, racial and ethnic minorities, women, the elderly, handicapped persons, and other medically underserved groups, are likely to have access to those services being proposed.
- g. The facility providing the proposed services should establish provisions to insure that individuals in need of treatment as determined by a physician have access to the appropriate service, regardless of ability to pay.

3. Financial Feasibility – 15

The applicant must have projected both the immediate and long-term financial feasibility of the proposal. Such projection should be reasonable and based upon accepted accounting procedures.

Cost Containment – 16a

- a. The applicant should have identified and sought alternative sources and/or methods of funding and demonstrated that the method chosen was the most feasible option.

Projected Revenues and Expenses – 6a, 6b, 7

- a. The proposed charges should be comparable to those charges established by other facilities for similar services within the service area or state. The applicant should document how the proposed charges were calculated.
- b. The projected levels of utilization should be reasonably consistent with those experienced by similar facilities in the service area and/or state. In addition, projected levels of utilization should be consistent with the need level of the target population.

Projections of construction costs, start-up costs, operating costs, debt service, depreciation, manpower costs, etc. should be consistent with those experienced by similar facilities offering a similar level and scope of services (with proper consideration given to such factors as inflation, cost of capital, etc.).

3. Acceptability – 4a, 4b

- a. The proposal and applicant should have the support of "affected persons" (including local providers and the target population). The lack of opposition should not be considered support for the purposes of these criteria.
- b. Where documented opposition exists to a proposal, such opposition will be considered along with the application.

Record of the Applicant – 13a, 13b

- a. The applicant's record should be one of successful operation with adequate management experience.
- b. The applicant should have a demonstrated ability to obtain necessary capital financing.

C. Analysis and Findings

1. Compliance with the Need as Outlined in the 2010-2011 South Carolina Health Plan

The application was reviewed under the 2010-2011 South Carolina Health Plan ("Plan"), which shows a need for 272 nursing care beds in Anderson County. Staff concludes the application complies with the need in the Plan.

2. Community Need Documentation – 2a, 2b, 2c, 2e

2a. Target Population.

Bed need is calculated on a county basis. Therefore, Anderson County is defined as the service area. In addition, it is assumed that since the need is projected for Anderson County, the target population will predominantly consist of Anderson County residents.

There were several attempts by the applicant to define the population to be served. Bates Stamped page 3 identifies Honea Path being marketed as a retirement community. The application stated the Primary Market (Geographic Service) Area to be Anderson, Abbeville, Laurens and Greenville Counties (page 537) and the secondary market to be Greenwood, McCormick, Newberry, Oconee, Pickens, Spartanburg and Union Counties (page 538). All other South Carolina Counties are identified as the Tertiary Market. During the Project Review

Meeting, the applicant stated the primary market area to be comprised of Anderson, Oconee, Pickens, Greenville, Laurens and Abbeville Counties.

The application states that 90% of residents are assumed to originate in the primary market area, 9% in the secondary and 1% from the tertiary. Based on patient origin from existing Anderson County nursing homes previously indicated to be approximately 85%, and Anderson County is the service area identified in the Plan, staff feel it is appropriate to assume the majority of patients will originate from Anderson County. Staff is concerned because the expansive Primary Market is not consistent with historical patient origin information. In a response dated January 20, 2012, the following projections were also provided (page 543):

Year	Occupancy Assumption	Market Area	Adjusted Capture Rate	Annual Number of Beds per Source
1	40%	Anderson (24.46% of PMA alone)	1.1061%	14.23
		Abbeville (3.05% of PMA alone)	1.1.061%	1.78
		Remaining Primary (64.47% of PMA)	0.9837%	37.52
		Secondary (9%)	0.1137%	5.82
		Tertiary (1%)	0.0036%	0.65
2	75%	Anderson (24.46% of PMA alone)	2.0739%	26.69
		Abbeville (3.05% of PMA alone)	2.0739%	3.33
		Remaining Primary (64.47% of PMA)	1.8444%	70.36
		Secondary (9%)	0.2132%	10.91
		Tertiary (1%)	0.0067%	1.21
3	90%	Anderson (24.46% of PMA alone)	2.4887%	32.03
		Abbeville (3.05% of PMA alone)	2.4887%	4.00
		Remaining Primary (64.47% of PMA)	2.2133%	84.42
		Secondary (9%)	0.2558%	13.10
		Tertiary (1%)	0.0080%	1.46

In its response of March 16, 2012, to the above breakdown of proposed patients by Market Area, the applicant reiterated that the “facility is organized to meet the unmet nursing bed need identified for Anderson County.” However, the projections above are not consistent with that statement since most of the patients are projected to originate outside of Anderson County.

In this response, the applicant stated (Bates stamped page 537) the Primary Target Population to be “patients discharged from acute-care to nursing care.” Acute-care discharges are typically a Medicare population in need of rehabilitative services. However, only 18 beds are proposed to be dedicated for rehab. On page 32, the applicant stated the target population to be those in need of skilled nursing care for a short period, to include short-term rehabilitative care and Alzheimer’s care, and those in need of long-term care.

During the project review, the applicant identified the “Target Market” as:

- Post-acute hospitalization patients with Medicare Part A and a qualifying physician’s order
- Post-acute hospitalization patients with insurance and/or resources to pay for rehabilitative care and a qualifying physician’s order

- Persons suffering from Alzheimer's and related dementias with insurance and/or resources to pay for long term-care and a qualifying physician's order
- Persons requiring long-term SNF care with insurance and/or resources to pay for long-term care and a qualifying physician's order

Staff concludes this Project Review Criterion was not met and the target population was not clearly identified due to contradictory information regarding serving Anderson County vs. Anderson, Abbeville, Laurens and Greenville Counties vs. Anderson, Oconee, Pickens, Greenville, Laurens and Abbeville Counties. The identified target population is information integral to projected utilization and thus financial feasibility.

2b. Population Projections.

Population projections were reasonable and the applicant used an appropriate source.

2c. Services to Meet Need.

See Target Population, Projected Utilization Justified and Opposition. The need for additional nursing care beds was identified in the 2010-2011 SC Health Plan. The proposed beds are less than the bed need of 272 beds identified in the Plan. However, due to lack of funding, there is no means for a new provider to obtain Medicaid patient days. Since the Medicaid Program pays for approximately 65% of all nursing facility residents, the project cannot meet this need. The project does propose services for Medicare, private pay and indigent patients (See Proposed Project Overview and Projected Utilization Justified).

There has been debate over whether or not Anderson County is a medically underserved population. Page 36 discussed the elderly population of Honea Path and that it is not a low income community. On page 749 and during the Project Review Meeting, the applicant stated that Anderson County was a Federally-Designated Medically Underserved Area (page 970). However, the applicant appears to refute this is a response dated July 23, 2012 (page 1005). According to information obtained from muafind.hrsa.gov/index.aspx, portions of Anderson County, the South Anderson and Belton population group qualifies for designation as an Index of Medical Underservice (IMU)-based Medically Underserved Population (MUP). The data is based on infant mortality rate, percentage of the populations with incomes below the poverty level and percentage of the population age 65 or over. The Health Resources and Services Administration (HRSA) provides detailed information regarding the designation process.

Staff concludes that while portions of Anderson County are medically underserved, the county as a whole is comparable to the statewide average in terms of income and persons below the poverty level (see Anderson County Demographics).

The applicant provided the following proposed breakdown by bed type (page 540):

Year	Occupancy	Category	Percentage	Number of Beds
1	40%	Rehab	12%	7.2
		Alzheimer's	16%	9.6
		Long Term Care	72%	43.2
2	75%	Rehab	12%	13.5
		Alzheimer's	16%	18.0

		Long Term Care	72%	81.0
3	90%	Rehab	12%	16.2
		Alzheimer's	16%	21.6
		Long Term Care	72%	97.2

The following proposed breakdown was provided by payor type (page 750):

Category	Year 1		Year 2		Year 3	
	Pt. Days	Occupancy	Pt. Days	Occupancy	Pt. Days	Occupancy
Medicare	12,053	22%	22,600	41%	27,120	50%
Private Pay	10,300	19%	19,313	35%	23,175	42%
Insurance/Other	1,754	3%	3,287	6%	3,945	7%
Indigent Care	(1,534)	-3%	(2,876)	-5%	(3,452)	-6%
Bad Debt	(657)	-1%	(1,233)	-2%	(1,479)	-3%
Total	21,915	40%	41,091	75%	49,309	90%

According to www.medicare.gov, Medicare Part A only covers skilled care, not long term care; therefore, it is appropriate for Medicare to cover rehab services. Staff is unsure why 18 beds of 150 are allocated for Rehab, but Medicare days account for half the patient days for Year 3.

By comparison, according to 2011 JAR data, the following data was compiled for existing Anderson County nursing homes:

Nursing Home	Medicare Admissions	Medicare PT Days	Medicare PT Days Per Admission	Total Admissions	Total PT Days	Percent Medicare Admissions	Percent Medicare PT Days
Ellensburg	160	5,178	32	234	63,003	68.4%	8.2%
Emeritus Anderson PL	135	5,519	41	136	14,345	99.3%	38.5%
Exalted	120	4,893	41	130	20,924	92.3%	23.4%
Fellowship	109	5,993	55	157	30,642	69.4%	19.6%
Hosanna	187	6,372	34	272	31,157	68.8%	20.5%
NHC Anderson	421	27,695	66	529	103,283	79.6%	26.8%
Anderson County Totals	1,132	55,650	49	1,458	263,354	77.6%	21.1%

The range of patient days/admission is 32-66 days, and the range of lowest to highest admissions is 411-848. Using these figures and the applicant's proposed Year 3 projection of 27,210 Medicare patient days, the applicant would have to capture between approximately 36.3% (27,210/66) to 74.9% (27,210/32) of the 2011 utilization from existing providers and/or capture a substantial portion of Medicare patients generated by the bed need (See Projected Utilization Justified).

The data above indicates that Medicare comprised 77.6% of all admissions in Anderson County, but only 21.1% of total patient days. This is consistent with the fact that Medicare patients are typically discharged from acute care hospitals for relatively short lengths of stay, with a range of 32-66 patient days per Medicare admission for Anderson County.

When asked about in-migration from existing facilities, in a response dated March 16, 2012, the applicant stated that no in-migration is assumed. However, staff concludes it is reasonable to assume that with a new facility and provider, there will be in-migration from existing facilities.

The affected persons stated that the proposed project will have no enhanced access to Medicaid patients. It is a fact that Medicaid permit days are not available for new providers. The nursing home bed methodology does not delineate the bed need between Medicaid and non-Medicaid beds, and non-Medicaid facilities are not precluded from serving a Medicaid-eligible population temporarily via Medicare. The SC Health Plan estimates that the Medicaid Program pays for approximately 65% of all nursing facility residents.

Medicaid patient days have been declining statewide every year. On August 1, 2012, the Department of Health and Human Services published the number of Medicaid patient days to be permitted for state fiscal year 2013, with an authorized total of 3,815,921 days. This was comprised of 3,771,878 base days and 44,043 reallocated days. For comparison, there were 3,771,878 days permitted for FY 2012, and 4,205,553 days for FY 2011. Due to lack of Medicaid, the proposed project is not eligible for Medicaid patient days.

2e. Projected Utilization Justified.

The applicant has proposed aggressive projections, with occupancies of 40%, 75% and 90% for Years 1-3. For comparison, staff examined a recent new nursing care facility, NHC Healthcare-Bluffton with 120 beds. NHC achieved a 26.4% occupancy in Year 1 and 73% occupancy in Year 2, with 66% Medicare admissions. Staff recognizes the demographics of the projects differ (Bluffton is a retirement community) and that NHC is a well-established company, but wants to demonstrate the applicant's aggressive Year 1 projection of 40% occupancy and Year 2 projection of 75% could be difficult to achieve. Staff do not agree the projections can be accomplished without in-migration from existing providers in Anderson County, as stated by the applicant.

The applicant examined post-acute hospital discharges to nursing facilities during 2010 and documented discharges by age for Anderson, Oconee, Pickens, Greenville, Laurens and Abbeville Counties. Data was provided from the Office of Healthcare Workforce Analysis and Planning during the Project Review Meeting that indicated 8,276 discharges from the Primary Market Area for the 65+ age population. A table on page 542 of the application indicated the "Total Discharges to a SNF in Anderson County" in this age group to be 1,482 discharges. JAR data indicated the current Anderson County nursing homes admitted 1,132 Medicare patients in 2011. By comparison, according to SC ORS, the total number of Anderson County residents aged 65+ years that were discharged from acute care hospitals in 2011 was 8,567 discharges for a population estimated to be 29,057 persons. Staff feels it is more appropriate to focus on Anderson County discharges as opposed to including adjacent counties or statewide discharges.

The projected utilization estimates Medicare occupancy at 12,053 patient days or 33 beds for Year 1, 22,600 patient days or 62 beds for Year 2, and 27,120 patient days or 74.3 beds for Year 3. Staff notes the applicant projects to provide approximately the same number of Medicare patient days in Year 3 as provided in 2010 by approximately half of the Medicare days provided by all current Anderson County nursing homes, which could be difficult to achieve. This projection is aggressive if 90% of the patients are projected to originate from Anderson County.

Services are planned to be offered to patients receiving prolonged mechanical ventilation (PMV), with a limited projected census of 1.8 in Year 1, 3.38 in Year 2 and 4.05 in Year 3. The projected hospice patient census is 16.34 in Year 1, 30.59 in Year 2, and 36.71 in Year 3 (page 535). Staff notes there is only one other nursing home in SC that admits ventilator patients, and the facility is located in Aiken County.

Staff considered the current utilization at existing facilities, the lack of availability of Medicaid days and the need identified in the current Plan. Staff noted and considered this does not include the 60 beds to be added back to the inventory (voidance of The Gardens at Town Creek in Pendleton) and current Anderson County nursing homes are consistently operating at near capacity. The lack of Medicaid days and the impact upon competition for Medicare patients is further examined under Acceptability.

On page 32 of the application, the applicant stated that “this proposed facility has established Transfer Agreements with local area hospitals totaling more than 2,200 beds.” The applicant provided an executed Transfer Agreement with AnMed Health in Anderson County, Abbeville Area Medical Center in Abbeville County and Self Regional in Greenwood County. However, these documents do not represent a commitment to discharge patients to Chiquola Maison. Abbeville Area Medical Center did submit a letter of support which did indicate “we anticipate utilizing these facilities for patients who will need further care in these specialized care environments” (page 478). Staff notes that, according to 2011 SC ORS data, Abbeville Area Medical Center discharged a total of 31 Anderson County residents, so staff does not anticipate that Abbeville Area Medical Center will be a significant referral source for the applicant.

Staff concludes this Project Review Criterion is not met due to the following: it is inappropriate not to consider in-migration from existing facilities within the projected utilization; it is not appropriate to consider all discharges from hospitals to skilled nursing care facilities (8,275 discharges) within the identified Primary Market Area; and, the size of this project with 180 beds is oversized compared to the needs of the Anderson County Medicare population.

Acceptability – 4a, 4b

4a. Support of “Affected persons.”

Approximately one hundred letters of support were received, the vast majority being community letters of support, with four being medical (such as Honea Path Family Medicine and Abbeville Area Medical Center) and seven from elected officials. Around 30 persons identified themselves as being from Honea Path. The letters from Honea Path Family Medicine did not indicate a willingness to refer patients to the proposed facility. Staff is concerned about the lack of medical support letters, since physicians will be an important referral source.

Strong community support from Honea Path exists for this project. The applicant stated that extensive meetings were held with the local community and leadership of Honea Path. On March 1, 2011, the city council of the Honea Path passed a resolution stating, among other items, that the development of a skilled nursing facility is in the best interest of the town and its citizens (page 244). Support letters were submitted by Mayor Earl Lollis Meyers and Mayor Pro Tem Sonny Davis for the Town of Honea Path, as well as five members of the Town Council. A letter was also provided by the President of the Anderson Area Chamber of Commerce, Senator O'Dell and two members of the Anderson County Council. Staff received around 80 community letters of support, but around 50 had incomplete return addresses, so these letters

were discounted. Most letters focused on the creation of new jobs for the community, which is not a Project Review Criteria or purpose of CON.

Staff concludes the project has limited support from healthcare providers and the target population outside of Honea Path, as evidenced by the lack of letters of support.

4b. Opposition. Opposition from affected parties has been considered.

The affected parties are Covenant Way/Carlisle Nursing Center in Due West and:

Exalted Health & Rehab of Iva (“Exalted”) – near Abbeville County border
 Fellowship Health & Rehab of Anderson (“Fellowship”) – city of Anderson
 Hosanna Health & Rehab of Piedmont (“Hosanna”) – near Greenville County border

The above three facilities are all owned by Olive Leaf, LLC and are part of the Covenant Dove system (“Covenant Dove”), that operates 59 nursing homes in 13 states, including 16 in SC. Below is data from the 2011 JARs and Medicaid Permits for these facilities:

	Exalted	Fellowship	Hosanna
Licensed Beds	60	88	88
Beds Set Up & Staffed	56	88	88
2011 Medicaid Permit Days	11,680	22,050	18,615
Permit Days Used	14,481	21,198	16,531
Total Medicare Admissions	120	109	187
Medicare Patient Days	4,893	5,993	6,372
Total Patient Days of Care	20,924	30,642	31,157
Total % occupancy	95.6%	95.4%	97%
Total Admissions, 2011	130	157	272
Patients on last day of reporting period	56	88	85
Anderson Co. patients, last day	50	76	53

The vast majority of admissions for the Covenant Dove facilities were Medicare admissions (92.3%, 69.4% and 68.8% respectively). Approximately 20% of all patient days for these facilities were providing care to Medicare patients, for a total of 17,258 days. Staff notes the applicant proposes to provide 12,053 Medicare days in Year 1 and 22,600 Medicare days in Year 2, which are aggressive figures. The affected parties also provide significant Medicaid - current data indicate 14,481 days for Exalted, 21,198 days for Fellowship and 16,531 days for Hosanna.

Staff concurs that the loss of significant levels of non-Medicaid revenues and profits could adversely impair the ability of the existing Medicaid nursing home’s ability to continue to provide care to this under-served, low-income, elderly population.

Distribution (Accessibility)– 3b, (Location– medically underserved/duplication), 3d (Admissions), 3e (Access to services), 3f (Access to services by medically underserved), 3g (Access regardless of ability to pay)

The applicant is located so that it is accessible to the residents of Anderson County and nearby areas (3b). It is designed to serve the 65+ age population segment which has been identified in the Plan to need 272 beds in Anderson County. The applicant proposes to serve a large portion of Medicare patients and to set around 8% of its gross revenue for indigent care. The applicant

will not restrict admissions to its facility (3d), detailed access to services (3e), will provide services to the 65+ age group (3f) and will provide services regardless of ability to pay (3g). However, the applicant will be unable to serve the Medicaid population due to lack of allocation of Medicaid patient days (3g). (See also Target Population).

The applicant mentioned its participation in the Palmetto State Provider's Network or PSPN (a high speed data network) as a link to health resources throughout the state and mentioned working with the SC Area Health Education Consortium (AHEC). The applicant mentioned 88 organizations (pages 191-193) that could be a conduit for admissions. However, this is merely a list of participants in the PSPN, with no referral commitments except for Abbeville Area Medical Center. Staff concludes participation in the PSPN will not result in increased state-wide admissions since historical data indicates the vast majority of current admissions to Anderson County nursing homes originate from Anderson County. In addition, on page 367, the stated goal of PSPN is "to improve health status, education, and economic well-being for all South Carolinians" and is stated to be a broadband access network, not a referral source.

The applicant supplied a recruitment plan and marketing strategy and appears to be dedicated to serving the indigent population. The applicant provided documentation that AHEC would assist in educating, recruiting and retaining staff (page 365).

3. Financial Feasibility – 15 (Immediate and Long Term)

The applicant stated, to the extent possible, the project will use federally-guaranteed financing that will result in the longest amortization and the lowest interest rate (i.e., 40 years at 6.75%). To be conservative, the applicant assumed 6.5% at 25 years. See also Cost Containmentment.

Staff requested pro formas with a Net Revenue line item, but the applicant has produced pro formas with a line item for Net Cash Flow. During the July 12, 2012 Project Review Meeting, the applicant announced plans to seek contract management. This proposal was not previously included in the application. The pro forma provided August 15, 2012 as a response to the Department's request for further information, the applicant has now provided estimates for a performance-based management fee, averaging around the following per year for Years 1-5, respectively: \$230,000; \$460,000; \$570,000; \$590,00; and \$615,000. In addition, the applicant stated on page 42 they did not include depreciation, it was not an appropriate line item since it was a non-cash expense and if included, "the facility would appear to operate at a loss over its entire lifetime." Staff notes that R.61-15 Section 202.b.16 mentions budgets, to include providing "how depreciation was calculated." Depreciation expense is a typical line item in budgets for CON projects, even for non-profits.

Staff concludes that the financial feasibility of this project is questionable given the project's size and aggressive projected utilization. Staff is concerned with the continued evolving nature of the financial projections and pro formas, even without consideration of the management fee.

Cost Containmentment – 16a

On March 8, 2012, Jesse T. Risher, Community Facilities Program Director with the United States Department of Agriculture (USDA) Rural Development program provided an explanation regarding loans. He indicated approval of the loan would be subject to the award of the CON, availability of funds, underwriting requirements and market conditions. Mr. Risher indicated the proposed site for Chiquola Maison was an eligible area, financing could be offered below typical

market financing and Honea Path would be a priority area for use of the funds. Since the funding was contingent upon the award of the CON, among other items, the USDA could not provide a letter indicating they were willing to fund the project.

Therefore, on March 14, 2012, the applicant obtained documentation from Martin Royal, Vice President, Oppenheimer Multifamily Housing and Healthcare Finance ("Oppenheimer") indicating interest in providing construction and permanent loan financing for the proposed project. The letter indicated loan amount of up to \$29,450,800 for 40 years at a fixed rate of 5.5% with a maximum value of the lesser of 85% of appraised value or 95% of construction costs. The Oppenheimer letter states that, based upon a preliminary review of the information provided, the project meets the requirements for a FHA 232 loan (page 757). The letter further states the terms were subject to completion of specific due diligence by Oppenheimer underwriting in compliance with the FHA 232 LEAN guidelines as approved by HUD. Mr. Royal indicated he felt the project was financially feasible for 40 years, maintaining a minimum 1.45x Debt Coverage Ratio throughout that time. Staff notes the Oppenheimer Executive Summary (pages 761 and 762) includes an underwriting parameter of 95% occupancy and an estimated annual net income of \$4,157,770. It also indicates 83 Medicare beds and 60 private pay beds. Staff notes that the applicant has repeatedly indicated a maximum occupancy of 90% is assumed, with a payor mix of 45% Medicare and 47% private pay. The applicant also indicated a payor mix of 50% Medicare (17,120 patient days for Year 3 or 74.3 beds) and 42% private pay (23,175 patient days or 63.5 beds). Staff further notes the Expenses line on the Oppenheimer Executive Summary includes a blank line item for Management Fee.

A letter dated March 14, 2012 from Eric Roy, Managing Director, Harborview Strategic Investments, stated that subject to commitment by Oppenheimer, they can provide up to \$6,600,000 in equity financing for the project (page 759). Michael Spaulding, Operations Manager, Direct Mortgage Lenders Corp., also submitted a letter that given the proposed debt financing, they are prepared to offer up to \$6,600,000 in capital in exchange for an equity position, or a subordinated claim, on the contemplated facility (page 760).

Staff concludes the applicant identified and sought sources of funding and presented a feasible option. Staff notes that Oppenheimer stopped short of stating the applicant could obtain such financing and some information in the Oppenheimer Executive Summary does not reconcile with information provided by the applicant.

Projected Revenues and Expenses – 6a, 6b, 7

The applicant provided a comparison of their proposed charges and compared them with similar facilities (6a). The applicant provided data from the 2011 Genworth Cost of Care Survey, a feasibility analysis conducted by Providence Consulting Group and data from the Department of Health and Human Services (Financial Statistical Report for Nursing Homes, 2008-2010). The Health and Human services data examined actual costs for seven area nursing homes. Financial projections for up to 30 years were provided for the project.

The applicant provided projected aggressive levels of utilization that could be difficult to achieve. Year 3 projections were consistent with levels of well-established facilities, not a new provider in an established market (6b). The proposed percentage of Medicare Patient Days was substantially greater as compared with existing providers. (See 2c, Services to Meet Need, and 2e, Projected Utilization Justified)

The cost projections were consistent with similar facilities except that the applicant excluded depreciation, while other non-profits have included it.

Staff is concerned that the projected revenues cannot be achieved due to the nature and aggressiveness of the projected utilization.

3. Record of the Applicant – 13a, 13b

a. Experience

The applicant, whose licensee was created for the purpose of this application, does not previously exist and therefore does not have prior nursing home experience. However, the applicant provided documentation it has sought technical assistance. A letter from Marc Armstrong-Wright of Lee, LLC indicates availability of technical assistance. Mr. Wright cited experience with retirement communities and nursing homes.

Non-profit organizations that contributed to the development of the application were Stable Affordable Family Enrichment, Inc. (“SAFE”) and Southland Community Development Corporation (“Southland”). They have not developed nursing homes, but have extensive experience in developing senior living communities. Mr. Vergil Daughtery, the project developer, stated that he was a former nursing home administrator in the State of Georgia, but failed to provide details. The proposed architect has extensive experience with nursing home facilities, but none in South Carolina.

While there was not a specific management contract referenced in the application, a contract was proposed during the July 12, 2012 Project Review Meeting. As previously stated, staff concludes that Chiquola Maison amended its application as evidenced by the information presented during the July 12, 2012, Project Review Meeting in which they announced the intent to contract with a management company. This information was confirmed in a document dated August 15, 2012, but was never included with the original application or in information received prior to publishing of Notification of Affected Persons in the April 27, 2012 State Register. The management fee is proposed to be paid from net revenue and not a line item under “Expenses” because “any fees for management, consulting, and technical assistance should be commensurate with performance as measured by occupancy and revenue.” Regarding the identification of the management company, the response stated “we are negotiating with multiple experienced, national-level-providers of technical, management and consulting services.”

The applicant stated during Project Review of partnering with a “an experienced SNF entity” and that the applicant will “rely upon DHEC for determination of whether this partnering will demonstrate sufficient experience.” Staff cannot determine if an unknown entity will demonstrate sufficient experience. Staff notes the specific lack of experience in of SAFE and Southland in developing nursing homes, particularly given the size of the project with 150 beds proposed and a total project cost of \$34 million.

In its August 15, 2012 response, the applicant states the management firm would not be identified until a CON was awarded and they would expect DHEC comments and consideration about whether they are “sufficient.” However, that type of determination is not under DHEC’s purview.

Staff concludes this Criterion cannot be met since information was not provided to demonstrate a record of successful operation – utilizing a company with management experience was not

proposed in a timely manner and a draft agreement has not been provided to the Department. Staff is concerned the costs are not expensed under Operating Expenses, even though it appears to have been contemplated at some point in time.

13.b Ability to obtain financing.

See Cost Containment.

Conclusion

Staff concludes the identification of the Primary Market of Anderson, Oconee, Pickens, Greenville, Laurens and Abbeville Counties and the projected utilization estimated to originate from the counties outside of Anderson County is not consistent with historical patient origin among existing area nursing homes. Furthermore, the applicant only proposes that approximately 25% of all patients will originate from Anderson County, so it does not appear the needs of Anderson County will be met. On the other hand, if the “facility is organized to meet the unmet nursing bed need identified for Anderson County” as stated by the applicant, then substantial Medicare patients would have to be captured. As demonstrated, if this utilization comes from existing providers, adverse impact would occur and potential substantial adverse impact is likely.

Staff is concerned about the accuracy or achievability of the aggressive projected utilization, which would directly affect the financial viability of the project. Staff is concerned about the timing of the July application amendment proposing the use of a management company. Staff is concerned about the continuing changes to the pro formas and if all expenses have been properly captured.

Staff acknowledges there is significant community support for the project and it will bring jobs to the area, but these factors cannot be considered under the constraints of Regulation 61-15 or the purpose of the Certificate of Need program. Furthermore, future planned building for this site indicated to be an assisted living facility, a medical office building, a medical retail building and a senior independent living building are not precluded as they will not require CON review.

In summary, staff concludes the proposed project does not comply the following Project Review Criteria: 2a (Target Population), 2e (Projected Utilization Justified) and 13a (Experience). Staff is also concerned with the ability of the applicant to comply with 2c (Services to Meet Need), 4a (Support of Affected Persons) and 15 (Financial Feasibility). In consideration of Project Review Criteria 4b, Opposition, staff concurs that, based on the proposed capturing of Medicare patient days, an adverse impact would occur to the existing Anderson County nursing care providers that provide Medicaid nursing home services. It is important for these providers to remain financially viable in order to continue to provide care to this underserved, low-income, elderly population. The applicant also amended its application during the review period contrary to R.61-15 Section 310 by indicating an intent to partner with “an experienced South Carolina SNF entity” for management services. Therefore, it is staff’s decision not to issue a Certificate of Need for the proposed project.